



BIDEN'S RETURN TO HYPER-REGULATION

Currently, federal regulations are estimated to cost American businesses and consumers over \$1.9 trillion annually.¹ The Obama Administration alone issued over \$890 billion in new regulatory costs.² The Trump Administration took action to reduce this burden by eliminating \$198.6 billion in regulatory costs, which average \$1,546 for every American household, and waiving restrictive regulations during the COVID-19 pandemic.³ Unfortunately, on his first day in office, President Biden abandoned the path to reducing red tape and cemented a return to increased burdensome government regulations, despite the many harmful consequences on Americans.

- **Revoking the deregulatory and transparency efforts of the Trump Administration.**
 - President Biden's Executive Order 13992 revoked numerous executive orders from the Trump Administration, such as: the order reducing regulation and regulatory costs, also known as the one-in, two-out rule; the order improving the transparency of agency guidance, which provides clarifying information for these regulations; and the order enforcing those reforms.⁴
 - The regulatory cost caps put in place by the Trump Administration largely served to limit the overall burden of regulations, since this burden is estimated to slow economic growth by 0.8 percent per year, amounting to over a trillion dollars of lost output in the last decade. For example, this slowing of economic growth between 1980 and 2012 amounts to a loss of \$13,000 for every American.⁵
 - The most partisan revocation is likely on the order improving transparency of agency guidance, which was previously supported on a bipartisan basis.⁶ Agency guidance, not just regulations, affect Americans in their everyday lives, such as the Biden Administration order requiring individuals to wear masks on all public transportation.⁷
- **Incentivizing agencies to inflate benefits of regulations to promote political interests.**
 - The Biden "Modernizing Regulatory Review" memorandum reaffirms Executive Order 12866 from the Clinton Administration, which watered down the Reagan Administration cost-benefit analysis standard of benefits needing to "exceed" costs, to simply having the benefits "justify" the costs.⁸
 - The memorandum states the review process should fully account for and maximize regulatory benefits that are difficult or impossible to quantify. Therefore, this encourages benefits to be inflated while neglecting to assess costs in the same manner, giving even more power to the regulatory state.⁹
 - Additionally, the memorandum explicitly states that these changes should serve to "affirmatively promote regulations" that advance the Biden Administration's vaguely articulated political goals, such as social welfare, racial justice, human dignity, and equity.¹⁰
- **Congress should reclaim its lawmaking power from federal agencies.**
 - Over the years, Congress has continued to delegate its lawmaking authority under Article One of the Constitution to federal agencies. The legislative branch should fully restore its lawmaking authority, while the executive branch performs its proper role of enforcing these laws.¹¹
 - Congress should also support additional oversight and transparency of existing regulations by requiring retrospective review of regulations to determine if there is evidence that the benefits of the regulation continue to outweigh its costs and that it accomplishes Congress's intended effect.

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- ¹ Clyde Wayne Crews. Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State. Competitive Enterprise Institute. 2017. <https://cei.org/sites/default/files/Ten%20Thousand%20Commandments%202017.pdf>
- ² Sam Batkins. Midnight Regulations Push Obama Administration's Regulatory Tally Past \$890 Billion. American Action Forum. February 2, 2017. <https://www.americanactionforum.org/insight/midnight-regulations-push-obama-administrations-regulatory-tally-past-890-billion/>
- ³ Regulatory Reform under Executive Order 13771: Final Accounting for Fiscal Year 2020. Office of Information and Regulatory Affairs. 2020. https://www.reginfo.gov/public/pdf/eo13771/EO_13771_Final_Accounting_for_Fiscal_Year_2020.pdf; Historical Household Tables. United States Census Bureau. December 2020. <https://www.census.gov/data/tables/time-series/demo/families/households.html>; Numerous harmful regulations were waived under the Trump Administration during the COVID-19 crisis, such as allowing doctors to provide telehealth services to Medicare patients to provide flexibility to healthcare providers. COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers. Centers for Medicare & Medicaid Services. February 19, 2021. <https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf>
- ⁴ Executive Order 13992: Revocation of Certain Executive Orders Concerning Federal Regulation. Federal Register. January 20, 2021 <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01767.pdf>
- ⁵ Bentley Coffey, Patrick McLaughlin, and Pietro Peretto. The Cumulative Cost of Regulations. The Mercatus Center. April 26, 2016. <https://www.mercatus.org/publications/regulation/cumulative-cost-regulations>
- ⁶ Peter R. Orszag. Memorandum for the Heads and Acting Heads of Executive Departments and Agencies. Office of Management and Budget. March 4, 2009. https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/memoranda_fy2009/m09-13.pdf and Senator Ron Johnson, et al. February 8, 2021. <https://www.portman.senate.gov/sites/default/files/2021-02/2021-02-08-letter-to-president-biden-re-eo-13891-.pdf>
- ⁷ Martin S. Cetron. M.D. Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs. January 29, 2021. https://www.cdc.gov/quarantine/pdf/Mask-Order-CDC_GMTF_01-29-21-p.pdf
- ⁸ Executive Order 12866: Regulatory Planning and Review. Federal Register. September 30, 1993. https://www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf and Clyde Wayne Crews. A Look at "Modernizing Regulatory Review." Competitive Enterprise Institute. January 21, 2021. <https://cei.org/blog/a-look-at-modernizing-regulatory-review/>
- ⁹ Modernizing Regulatory Review. Federal Register. January 26, 2021. <https://www.federalregister.gov/documents/2021/01/26/2021-01866/modernizing-regulatory-review>
- ¹⁰ Modernizing Regulatory Review. Federal Register. January 26, 2021. <https://www.federalregister.gov/documents/2021/01/26/2021-01866/modernizing-regulatory-review>
- ¹¹ See also the House Republican Policy Committee policy guide, 116th Congress, entitled "Create Congressional Accountability for Major Rules," accessed here <https://republicanpolicy.house.gov/sites/republicanpolicy.house.gov/files/documents/33%20-%20Create%20Congressional%20Accountability%20for%20Major%20Rules.pdf>.